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July 24, 2006

VIA FEDEX

Kentucky Public Service Commission
Attn: Filings Division, Docket Branch
211 Sower Boulevard
Frankfort, KY 40601

RECEIVED

JUL 25 2006

PUBLIC SERVICE
COMMISSION

Re: Joint Motion for Rehearing and/or Confirmation of Time
PSC Case Number: 2005-00059
Site Name: Chenault

Dear Filings Division Manager:

Please find the enclosed original and five (5) copies of a Joint Motion for Rehearing per KRS 278.400 and/or Confirmation of Time Period for Construction for filing in the above referenced matter. After the filing, please return the additional file-stamped copy to me in the postage paid enclosed envelope.

Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Keith Brown", with a long horizontal flourish extending to the right.

F. Keith Brown

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

In the Matter of:

JUL 25 2006

THE APPLICATION OF)
CELLCO PARTNERSHIP, D/B/A VERIZON WIRELESS)
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO CONSTRUCT)
A WIRELESS COMMUNICATIONS FACILITY AT)
KY HWY 34 & CHENAULT BRIDGE ROAD)
LANCASTER, KENTUCKY 40444)
IN THE WIRELESS COMMUNICATIONS LICENSE AREA)
IN THE COMMONWEALTH OF KENTUCKY)
IN THE COUNTY OF GARRARD)

PUBLIC SERVICE
COMMISSION

CASE NO.: 2005-00059

SITE NAME: CHENAULT

* * * * *

**JOINT MOTION FOR REHEARING PER KRS 278.400 AND/OR CONFIRMATION OF
TIME PERIOD FOR CONSTRUCTION**

Cellco Partnership, a Delaware General Partnership, d/b/a Verizon Wireless ("Transferor"), and Mid-States Properties, LLC, a Kentucky Limited Liability Company ("Transferee"), by counsel, hereby jointly and timely move the Kentucky Public Service Commission ("PSC") for rehearing pursuant to KRS 278.400 (and any other authority) and/or confirmation of the time period for construction pursuant to the July 6, 2006 Order issued in the within action based on the following facts and circumstances:

1. On **May 31, 2006**, Cellco Partnership d/b/a Verizon Wireless and Mid-States Properties, LLC filed a joint motion for approval to transfer authority from Verizon Wireless to Mid-States for the construction of the wireless communications facility previously approved in this proceeding by Order dated July 8, 2005.

pursuant to the original design specifications approved by the PSC in the Order of July 8, 2005. However, Mid-States Properties, LLC seeks for its rights under the July 6, 2006 PSC Order and KRS 278.020 to be formally recognized by the PSC so that lenders, collocating wireless carriers, and other public and private third parties with which it has dealings regarding this wireless communications facility will have full confidence that the facility is in compliance with PSC requirements.

7. Mid-States Properties, LLC is of the view that above-referenced provision in KRS 278.020 which provides that the one year period for construction is “... **exclusive of any delay due to ... failure to obtain any necessary grant or consent**” is applicable in the present circumstances as a matter of law to extend the one year period under the original July 8, 2005 Certificate of Public Convenience and Necessity Order of the PSC for the time period the Joint Motion of Mid-States Properties, LLC and Verizon Wireless was pending – i.e. the **36 day period** between May 31, 2006 and the issuance of the PSC Order approving transfer on July 6, 2006.

8. Accordingly, the PSC is requested on rehearing to enter an Order recognizing that under the facts and circumstances of this action that the one year period was tolled during the 36 day period referenced above and did not again begin to run until the entry of the July 6, 2006 Order of the PSC. Such an approach would be consistent with that of the PSC in an Order entered April 26, 2005 in Case No. 2004-00053 (2005 Ky. PUC Lexis 399); an Order entered May 7, 2002 in Case No. 2000-00365UAC (2002 Ky. PUC Lexis 185); an Order entered December 3, 2001 in Case No. 2000-367 (2001 Ky. PUC Lexis 1367); an Order entered June 9, 1998 in Case No. 97-161 (1998 Ky. PUC Lexis 534); and an Order entered February 8, 1996 in Case No. 94-

164 (1996 Ky. PUC Lexis 92). [Copies of the foregoing Orders of the PSC are attached hereto and incorporated by reference as **Exhibit B.**]

9. In considering the within Motion, the PSC is asked to give consideration to the good faith of Mid-States Properties, LLC and Verizon Wireless in making their Motion for Transfer on May 31, 2006, over a month *prior* to the original time for expiration of the original one year period and in making the within Motion *prior* to expiration of the 20 day period of KRS 278.400.

10. In considering the within Motion, the PSC is asked to give consideration to the practical difficulties of an applicant attempting to have contractors on standby to obtain a building permit and start construction by a specific date when - up to only a few days in advance of such date - it is uncertain when or if a PSC Order would be entered authorizing construction by Mid-States Properties, LLC.¹ Mid-States Properties, LLC in anxious to construct the wireless communications facility and to allow Verizon Wireless and possibly other carriers to provide service in the area, but coordination of the receipt of the July 6, 2006 Order and immediate start of construction on or before Monday July 10, 2006 proved to not be possible.

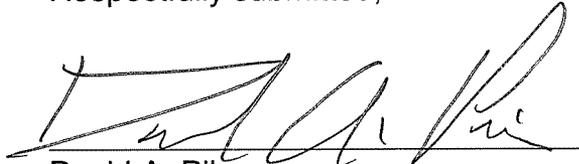
11. In these circumstances, the PSC is requested to either (a) confirm by Order the tolling of the running of the one year period for the 36 days the Motion for Transfer was pending, thus allowing the one year period to run for 36 days beyond July 6, 2006 plus the amount of time it takes for the PSC to enter an Order in the within

¹ Mid-States Properties, LLC and Verizon Wireless have no quarrel with the PSC for the time it took to enter its well-reasoned Order of July 6, 2006. The within Motion arises because of a "Perfect Storm" of a looming deadline, awaiting an Order to be entered, and attempting to coordinate prompt start of construction.

action²; or (b) to extend the start of construction period for 30 days, plus the amount of time it takes for the PSC to rule on the within Motion, beyond the original one year period in the interest of facilitating the meeting of the need for wireless service in the area pursuant to any other authority of the PSC to extend such period; or (c) to grant Mid-States Properties, LLC and Verizon Wireless any other relief to which they may be entitled.

WHEREFORE, the Transferor and Transferee, by counsel, urge the PSC to approve the within Motion on an expedited basis without public hearing.

Respectfully submitted,

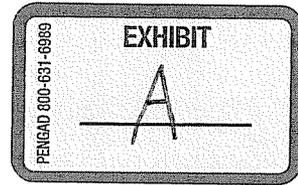
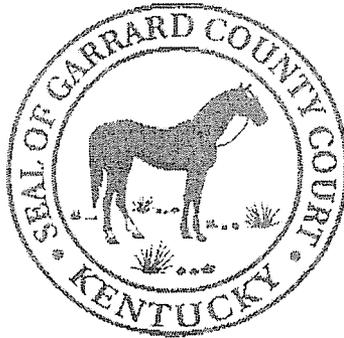


David A. Pike
And



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Telephone: (502) 955-4400
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Attorneys for Mid States Properties, LLC and
Cellco Partnership, d/b/a Verizon Wireless

² Mid-States Properties, LLC and Verizon Wireless by asking for the time the within Motion is pending to be tacked on to the start of construction period are trying to avoid the risk of the construction time period running out prior to or with a matter of days after the PSC's ruling on the within Motion.



Garrard County Construction Department

15 Public Square
Lancaster, Kentucky 40444
859-792-3531

BUILDING CONSTRUCTION PERMIT



NO. 06180

[Handwritten Signature]

OFFICIAL SIGNATURE

THIS PERMIT MUST BE POSTED ON THE PREMISES IN A CONSPICUOUS PLACE SO AS TO BE SEEN FROM THE STREET ON WHICH THE STRUCTURE FACES.

NON TRANSFERABLE

TYPE OF STRUCTURE: A Misc. Group U

LOCATION: Chenault Bridge Rd

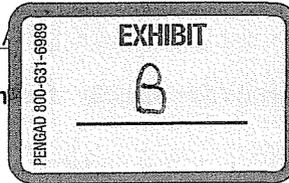
DATE ISSUED: 2006-07-13

Apex Cellular

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2005 Ky. PUC LEXIS 399

In the Matter of: APPLICATION OF BELLSOUTH MOBILITY, LLC, D/B/A CINGULAR WIRELESS -
- KENTUCKY FOR ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO CONSTRUCT A WIRELESS COMMUNICATIONS FACILITY AT 630 SUGGS ROAD, CARLISLE,
KENTUCKY IN THE WIRELESS COMMUNICATIONS LICENSE AREA IN THE COMMONWEALTH
OF KENTUCKY IN THE COUNTY OF NICHOLAS SITE NAME: BLUE LICKS

CASE NO. 2004-00053

Kentucky Public Service Commission

2005 Ky. PUC LEXIS 399

April 26, 2005

OPINION:

ORDER

On March 25, 2004, the Commission granted a Certificate of Public Convenience and Necessity ("CPCN") to BellSouth Mobility, LLC, d/b/a Cingular Wireless -- Kentucky ("Applicant") to construct and operate a wireless telecommunications facility ("cell tower facility") at 630 Suggs Road, Carlisle, Nicholas County, Kentucky. The facility is referred to as Blue Licks. [KRS 278.020\(1\)](#) requires Applicant to exercise the authority granted by the CPCN by commencing or beginning construction of the facility within 1 year of the issuance of the CPCN.

On March 7, 2005, Applicant moved for an extension of the statutory period to begin construction of the proposed facility. In support of its motion, Applicant states that the Federal Communications Commission's ("FCC") consent is required before construction may begin and that the FCC has yet to issue its consent. Until such consent is granted, Applicant cannot begin construction of its cell tower facility as authorized by the CPCN issued on March 25, 2004.

Having considered Applicant's motion and being otherwise sufficiently advised, the Commission finds that the motion should be denied as moot. [KRS 278.020\(1\)](#) provides that construction authorized by a CPCN must commence within 1 year from the date of the issuance of the CPCN. It further provides an exclusive exception to the 1-year rule and allows an extension of the time period in which construction must commence "for delay due to . . . failure to obtain any **necessary grant or consent.**" The delay that Applicant is experiencing due to its efforts to obtain FCC consent for the proposed cell tower facility is squarely within the meaning of the exception in the statute. The statutory time period will not begin to run until the FCC takes final action on Applicant's request for FCC consent.

IT IS THEREFORE ORDERED that:

1. Applicant's motion is denied.
2. Sixty days from the date of this Order and then every 60 days thereafter, Applicant shall

file with the Commission a written status report on its pending application before the FCC.

3. Within 30 days of receiving final FCC approval, Applicant shall notify the Commission in writing of the approximate date that construction is to begin.

4. Within 10 days of the commencement of construction, Applicant shall advise the Commission in writing of the date on which construction began.

Done at Frankfort, Kentucky, this 26th day of April, 2005.

By the Commission

Commissioner W. Gregory Coker did not participate in the deliberations or decision concerning this case.

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2003 Ky. PUC LEXIS 576 ([Copy w/ Cite](#))

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2002 Ky. PUC LEXIS 185

In the Matter of: CROWN COMMUNICATION INC. AND KENTUCKY CGSA, INC. FOR ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT A WIRELESS COMMUNICATIONS FACILITY AT 1568 CYNTHIANA ROAD, PARIS, KY 40361 IN THE WIRELESS COMMUNICATIONS LICENSE AREA IN THE COMMONWEALTH OF KENTUCKY IN THE COUNTY OF BOURBON
SITE NAME: PEACOCK

CASE NO. 2000-00365UAC

Kentucky Public Service Commission

2002 Ky. PUC LEXIS 185

May 7, 2002

OPINION:

ORDER

On April 11, 2002, Crown Communication Inc. and Kentucky CGSA, Inc. (hereinafter "Applicants") filed a motion to amend the June 8, 2001 certificate of public convenience and necessity to construct the wireless facility to be located at 1568 Cynthiana Road, Paris, Bourbon County, Kentucky. Applicants assert that they have diligently pursued approval of the site from the Federal Communications Commission ("FCC") and have continued to negotiate with the state historical preservation officer and other groups. To date, final approval from the FCC has not been granted.

Though construction on the site will not begin until after one year from the Commission's Order, [KRS 278.020\(1\)](#) requires construction to begin within a year of the approval "exclusive of any delay due to...failure to obtain any **necessary grant or consent.**" The Commission finds that the delay herein is caused by lack of necessary consent. Therefore, this motion is not necessary and should be dismissed. Applicants shall notify the Commission upon receipt of the FCC approval and upon commencement of construction.

BE IT SO ORDERED.

Done at Frankfort, Kentucky, this 7th day of May, 2002.

By the Commission

ATTEST:

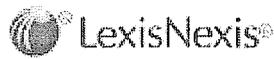
Executive Director

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2001 Ky. PUC LEXIS 1367

In the Matter of: APPLICATION OF CROWN COMMUNICATION INC. AND CELLCO PARTNERSHIP D/B/A VERIZON WIRELESS FOR ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT A WIRELESS COMMUNICATIONS FACILITY AT 1210 OUTER LOOP, LOUISVILLE, KENTUCKY 40219 IN THE WIRELESS COMMUNICATIONS LICENSE AREA IN THE COMMONWEALTH OF KENTUCKY IN THE COUNTY OF JEFFERSON

CASE NO. 2000-367

Kentucky Public Service Commission

2001 Ky. PUC LEXIS 1367

December 3, 2001

OPINION:

ORDER

On October 13, 2000, the Commission granted a Certificate of Public Convenience and Necessity to Crown Communication Inc. and Celco Partnership d/b/a/ Verizon Wireless ("Joint Applicants"). The certificate authorized Joint Applicants to construct and operate a wireless telecommunications facility to be located at 1210 Outer Loop, Louisville, Jefferson County, Kentucky 40219. Pursuant to KRS 278.020(1), Joint Applicants had 1 year to exercise the authority granted in the October 13, 2000 Order.

On October 12, 2001, Joint Applicants filed a motion for an extension of the statutory period to commence construction of the proposed facility. In support of their motion, Joint Applicants state that they must receive consent from the Federal Communications Commission ("FCC") before they can begin constructing the proposed facility. To gain this consent, Joint Applicants filed an Application for Environmental Action with the FCC on August 23, 2001, and the application was accepted on August 31, 2001. However, Joint Applicants state that the FCC has not yet issued its consent because of administrative delays resulting from the September 11, 2001 terrorist attacks. Joint Applicants now request permission to postpone construction of the proposed facility until they have obtained consent from the FCC.

Having considered Joint Applicants' motion, and being sufficiently advised, the Commission finds that Joint Applicants' request is warranted. KRS 278.020(1) allows extension of a Certificate of Public Convenience and Necessity to account for "any delay due to . . . failure to obtain any **necessary grant or consent.**" The FCC's delay in issuing the consent necessary for Joint Applicants to begin constructing the proposed facility falls squarely within the meaning of this statute.

IT IS THEREFORE ORDERED that:

1. Joint Applicants' motion is granted.
2. Joint Applicants shall commence construction of the proposed telecommunications facility

immediately upon receipt of consent from the FCC.

Done at Frankfort, Kentucky, this 3rd day of December, 2001.

By the Commission

ATTEST:

Thomas M. Dorman
Executive Director

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1998 Ky. PUC LEXIS 534

In the Matter of: THE APPLICATION OF UNITED STATES CELLULAR OPERATING COMPANY (FORMERLY KNOWN AS KENTUCKY RSA # 9-10, INC.) FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT A CELL SITE NORTHEAST OF THE SLADE INTERCHANGE ON THE MOUNTAIN PARKWAY, OFF NADA TUNNEL ROAD, NEAR NADA ARCHES IN POWELL COUNTY, KENTUCKY (SLADE SITE)

CASE NO. 97-161

Kentucky Public Service Commission

1998 Ky. PUC LEXIS 534

June 9, 1998

CORE TERMS: site, one year, constructed, cell, issuance

OPINION:

ORDER

On June 10, 1997, the Commission issued its Order in this case granting U.S. Cellular Operating Company authority to construct and operate a cell site in Slade, Kentucky. Subsequently, on December 16, 1997, the Commission modified its original Order to provide that the cell site would be constructed and operated by Westel-Milwaukee Company, Inc. ("Westel"). On June 2, 1998, Westel filed a motion requesting that the Commission extend the one year period given by [KRS 278.020](#) to construct the site. As ground for its motion, Westel states it has been informed that, because the property on which the facility is to be constructed is in the Daniel Boone National Forest, an officially designated wilderness area, it is required by federal law to file an environmental assessment with, and receive approval from, the Federal Communications Commission prior to beginning construction.

[KRS 278.020\(1\)](#) states that the authority conferred by the issuance of a certificate of public convenience and necessity expires within one year from the date of its issuance "exclusive of any delay due to the order of any court or failure to obtain any **necessary grant or consent**. . . ." The grounds for Westel's motion are those provided by the statute. Accordingly, the motion to extend the time in which construction must commence should be granted.

IT IS THEREFORE ORDERED that the period in which Westel is required to exercise the authority granted to it in this case is hereby extended until 90 days after Westel's receipt of all required permits and approvals from applicable government agencies including the FCC.

Done at Frankfort, Kentucky, this 9th day of June, 1998.

By the Commission

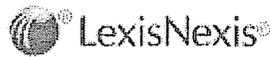
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1996 Ky. PUC LEXIS 92

In the Matter of: APPLICATION OF KENTUCKY RSA # 2, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT A CELL SITE OFF RICKETTS ROAD SOUTHWEST OF MORGANFIELD IN UNION COUNTY, KENTUCKY

CASE NO. 94-164

Kentucky Public Service Commission

1996 Ky. PUC LEXIS 92

February 8, 1996

CORE TERMS: notification, site, certificate, cell, reasonable diligence, tower, prosecuting, authority conferred, landowners, issuance, void

OPINION:

ORDER

On August 31, 1994, the Commission entered a final Order in this case granting Kentucky RSA # 2 a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications antenna tower near Morganfield, Kentucky ("the Morganfield cell site").

On November 30, 1995, the Commission received a letter from David Shreve, Sr., an intervenor in this case. In the letter, Mr. Shreve inquired about the status of the tower construction and asked whether Kentucky RSA # 2 still has the authority to construct the tower.

KRS 278.020(1) states, inter alia, that the authority conferred by the issuance of the certificate shall be void, unless exercised within one (1) year from the grant thereof, exclusive of any delay due to the order of any court or failure to obtain any **necessary grant or consent**. The statute further states that the beginning of any new construction or facility in good faith within the time prescribed by the Commission and the prosecution thereof with reasonable diligence shall constitute an exercise of authority under the certificate.

On December 13, 1995, Kentucky RSA # 2 filed a notification with the Commission. The Commission mailed a copy of the notification to Mr. Shreve on December 21, 1995 and informed him that any comments he might have regarding it should be filed with the Commission by January 3, 1996. No comments were filed.

The notification states that Kentucky RSA # 2 began construction at the Morganfield cell site on or about September 23, 1994. It also states that construction has been suspended because Kentucky RSA # 2 is negotiating with neighboring landowners who filed an action against it in Union Circuit Court on November 23, 1995. The landowners, seeking damages and to enjoin construction of the tower, allege that the construction would violate a restrictive covenant.

Kentucky RSA # 2's notification also includes a letter from the Kentucky Airport Zoning Commission ("KAZC"), extending the time for completion of the Morganfield cell site project to May 5, 1997. Kentucky RSA # 2 requests the same extension from the Commission. Kentucky RSA # 2 has exercised its certificate in the manner set out in [KRS 278.020\(1\)](#). It began construction in good faith within the prescribed time and it is prosecuting the construction with reasonable diligence in light of intervening litigation concerning the site. Consequently, the authority conferred by the issuance of the certificate is not void.

Having reviewed the notification and being otherwise sufficiently advised, the Commission finds that Kentucky RSA # 2's request, which is being treated as a motion, should be granted in part.

IT IS THEREFORE ORDERED that:

1. Kentucky RSA # 2's motion for an extension through and including May 5, 1997 is granted.
2. The certificate of Kentucky RSA # 2 for the Morganfield cell site is extended for six months, beginning on the date of this Order.
3. At the end of the six-month period, Kentucky RSA # 2 shall file a report with the Commission on the status of the construction so that the Commission can determine whether Kentucky RSA # 2 is still prosecuting the construction with reasonable diligence.

Done at Frankfort, Kentucky, this 8th day of February, 1996.

By the Commission

ATTEST:

Executive Director

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